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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

Michael Angelo MORALES et al.,
Plaintiffs,

v.

Matthew CATE, Secretary of the California
Department of Corrections and Rehabilitation,
et al.,
Defendants.

Case Number 3-6-cv-219-RS-HRL
Case Number 3-6-cv-926-RS-HRL

DEATH-PENALTY CASE

ORDER DENYING PLAINTIFFS’
MOTION TO VACATE

[Doc. No. 533]

PACIFIC NEWS SERVICE,
Plaintiff,

v.

Matthew CATE, Secretary of the California
Department of Corrections and Rehabilitation,
et al.,
Defendants.

Case Number 3-6-cv-1793-RS-HRL

DEATH-PENALTY CASE

ORDER DENYING PLAINTIFFS’
MOTION TO VACATE

[motion not on this action’s docket]

On November 3, 2011, the Court entered a scheduling order in the present actions, which involve challenges to the constitutionality of the State of California’s protocol for executions by lethal injection; the schedule includes a discovery cut-off date of August 15, 2012. (*Morales I*, Doc. No. 531; *Morales II*, Doc. No. 74; *Pac. News Serv.*, Doc. No. 124.) Subsequently, in

1 related state-court litigation, the Marin Superior Court, on state-law grounds, enjoined
2 executions pursuant to that protocol; the state court entered judgment in that case on February
3 23, 2012. *Sims v. Cal. Dep't of Corr. & Rehab.*, No. CIV 1004019 (Cal. Super. Ct. Marin Cnty.
4 filed Aug. 2, 2010).

5 Plaintiffs move the Court to vacate the current scheduling order, and to direct the parties
6 to submit a new proposed schedule “when viable lethal injection regulations are in place.”
7 (*Morales I*, Doc. No. 533 at 2.) Defendants take no position on the motion. (*Id.*)

8 It is unclear whether the *Sims* litigation has concluded and how precisely that case will
9 affect the present actions.¹ Plaintiffs’ motion therefore appears to be premature. In addition, the
10 Court is concerned that the absence of a schedule may result in undue and unnecessary delay in
11 the resolution of the instant actions. Accordingly, the Court denies Plaintiffs’ motion.

12 At the same time, the Court does not intend for the parties to engage in discovery that
13 may become moot and therefore wasteful. Accordingly, the Court is presently staying discovery
14 in these actions. The parties shall file a joint statement containing a proposed schedule or
15 schedules by July 16, 2012.

16 *It is so ordered.*

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19 DATED: April 5, 2012

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21 RICHARD SEEBORG
22 United States District Judge
23
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25 ¹ It is similarly unclear how another related action, this one in Federal District Court in the
26 District of Columbia, may affect the present actions. California’s lethal-injection protocol requires the
27 use of sodium thiopental, yet it appears that that court has ordered that the California Department of
28 Corrections and Rehabilitation must turn over its supply of sodium thiopental to the FDA. *Beaty v. FDA*,
No. 1-11-cv-289-RJL, slip op. at 2 (D.D.C. Mar. 27, 2012) (Order, Doc. No. 24); *see id.* (Mem. Op., Doc.
No. 23).